

Notes Log
Prepaid Wireless 9-1-1 Stakeholders Discussion
Wednesday, April 23, 2014

Please note: These notes provide abbreviated information about the stakeholder's discussion.

STAKEHOLDERS PRESENT

ETIC Vice-Chairman Keith Regier
Mark Baker –AT&T
Tara Thue – AT&T
Mark Staples – Verizon
Milt Doumit - Verizon
Chuck Denowh – TracFone
Rick Salzman -- TracFone
Bonnie Lorang – MITS
Mike Kadas – DOR Director
Gene Walborn – DOR
Lee Baerlocher – DOR
Dave Stewart -- DOR
Brad Griffin – Montana Retail Association
Bob Story – Montana Taxpayers Association
Beth Cooley – Cellular Telephone Industry Association

AGENDA & ATTENDEE'S LIST

Agenda, **Attachment 1**
Attendance List, **Attachment 2**

FOLLOW-UP ON PREPAID WIRELESS 9-1-1 ISSUES

Vice Chairman Regier gave an introduction of 9-1-1 prepaid issues and the goals of the discussion. Stakeholders looked for areas of agreement. There was a consensus that all prepaid entities, including third-party, should be paying 9-1-1 fees.

Gene Walborn, DOR, discussed how third-party sales have been collected in the past. He discussed the two different types of prepaid: 1. Direct pay by wireless subscribers and 2. Third-party retail sales. The AG opinion, which found that the DOR does not have the authority to collect the fee, is focused on third-party sales. Third-party sales were collected by the department based on department rulemaking (42.31.408, ARM). Two mechanisms were in place. 1. A provider could deduct minutes from accounts and remit the fee or 2. A fee was collected based on gross receipts in Montana. He noted that it was debatable whether all providers were collecting the fee or not. The DOR was engaged in audits to determine what was not being collected. Following the AG's Opinion, DOR is no longer conducting the audits or collecting the fees from third-party sales.

Stakeholders asked DOR what their preference is for collecting the fee.

Mr. Walborn said the department believes the best fit is to put the rule in statute. The rules go hand-in-hand with a handicap accessibility fee that is already collected using a similar mechanism.

Milt Doumit said Verizon does not support putting the rule into statute.

Tara Thue said AT&T does not support putting the rule into statute.

Vice-Chairman Regier asked if the DOR has reviewed the Oregon statute recently enacted – House Bill 4055, noting that Oregon is the only non-sales tax state that has implemented a point-of-sale collection mechanism for 9-1-1 fees on prepaid wireless.

Director Mike Kadas, DOR, said the department could administer a point-of-sale collection. However, the department is concerned about collecting the fee at the retail level vs. the wholesale level. He said he is concerned about the burden that places on small businesses in Montana.

Chuck Denowh noted that 33 states have point-of-sale collection.

Mark Baker asked DOR if the administration's opposition to point-of-sale collection has changed since the 2013 legislative session.

Director Kadas said it has not changed and that at this time point-of-sale collection at the retail level is absolutely not something the administration would support.

Stakeholders discussed how much prepaid wireless activity is taking place in Montana.

Mr. Walborn said the handicap accessibility fee that is collected provides a snapshot of the amount collected.

Mr. Denowh said using FCC numbers there are 864,000 mobile telephone subscribers in Montana. At the national level about 22% are prepaid subscribers. If Montana follows the national trend, then there are about 193,000 prepaid mobile subscribers.

Bob Story asked whether there is a difference in urban/rural in terms of prepaid wireless.

Stakeholders said it is difficult to track how many prepaid cards are sold in Montana. Cards are sold in a block to regional distribution centers and then flow to the retail level. Because of the portability of wireless, it is also difficult to track where those cards are activated.

Stakeholders agreed there is no perfect mechanism for collecting the fee.

Mr. Denowh noted that the statute makes it very clear that the fee is paid by the end user. Once someone buys a card from a third-party retailer, providers can't go back and send a bill and say money must be remitted to the department. He said he didn't see a feasible way to collect the tax after the transaction takes place.

Director Kadas asked if minutes could be deducted and then converted into a dollar amount to remit to the state.

Mr. Baker said the challenge is that the consumer is aware of that option, if it exists, and by the end of the month uses up all the minutes.

Beth Cooley also noted that unlimited plans are growing in popularity. Minutes can't be deducted from unlimited minutes and data.

Stakeholders discussed whether collecting the fee at the point-of-sale is similar to a sales tax.

Mr. Story said the Legislature intended the fee to be a flat fee that is visible to the customer. It is a fee for service not a sales tax.

DOR said that the lodging tax, for example, is collected from the provider of the facility. With prepaid wireless, the service is purchased from a retailer not the provider.

Mark Staples said it did not appear the stakeholders were going to agree on a collection mechanism and that the group was at a stalemate.

Mr. Baker said AT&T would not support legislation similar to HB 509 from 2013 again, given the position of the administration.

Bonnie Lorang reminded the group that the issue at hand is equitable. The statute intends that subscribers pay and providers collect, however that may be, the 9-1-1 fee.

Director Kadas said he agreed that all phones should be assessed the fee.

Mr. Story asked if the department planned to bring legislation or to go through the courts to address the issue.

Director Kadas said not at this point. He said that DOR will look at the Oregon bill and the legislation going through the Delaware Legislature.

The group **adjourned**.

Attachment 1

**Wireless 9-1-1 Discussion Group
Room 172, State Capitol
Wednesday, April 23, 2014**

- 2 p.m. Call to Order – ETIC Vice-Chairman Regier**
- 2:05 p.m. Introductions**
- 2:15 p.m. Goals of Gathering – Vice-Chairman Regier**
- 2:30 p.m. Areas of Agreement**
 1. Discussion by Stakeholders
 2. Potential Solutions
- 3:00 p.m. Areas of Uncertainty**
 1. Discussion by Stakeholders
 2. Potential Solutions
- 3:30 p.m. Review of Discussion and Potential Outcomes**
- 4:00 p.m. Adjourn**

During the March 2014 Energy and Telecommunications Interim Committee (ETIC) meeting, the committee learned more about a recent Attorney General's Opinion finding that the Legislature has not authorized the state to collect 9-1-1 fees for prepaid wireless services purchased from independent retail stores. The committee directed Vice-Chairman Regier to work with stakeholders to determine whether a potential legislative solution could be developed and brought back to the ETIC for discussion.

Please Sign - in.

name	organization	Email
(1) Sonja manakowski	Legislative Services	smakowski@mt.gov
(2) Sonnie Lorang	MTS	slorang@mtstel.com
(3) Gene Walborn	DOR	gwalborn@mt.gov
(4) Dave Stewart	DOR	dstewart@mt.gov
(5) Lee Baerlocher	DOR	lbaerlocher@mt.gov
(6) Mike Kadas	DOR	mkadas@mt.gov
(7) Rick Salegman	Travel PHL	
(8) Beth Wiley	IT & A	
(9) Tara Thwe	AT & T	
(10) Chuck Denowh	TracFone	cdenowh@Montanagroup.net
(11) MARK STAPLES	VERIZON	staplesmt@gmail.com
(12) TARA THWE	AT & T	tara.thwe@att.com
(13) Mark Baker	AT & T	markbaker@abslegal.net
(14) Milt Dooz, Jr	Verizon	milt.a.dooz@verizon.com